



# Deeds Excise DOR Directive 95-5

GOVERNMENT DOCUMENTS  
COLLECTION

Massachusetts  
Department of  
Revenue

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University of Massachusetts  
Department of Public Administration

## Deeds Excise on Transfers of Beneficial Interests in Nominee Trusts

### Introduction:

Title to real estate in Massachusetts may be taken in the name of a nominee trust. The Massachusetts nominee trust is based in common law and has been described as creating a principal-agent rather than a true trustee-beneficiary relationship. See *Apahouser Lock and Security Corporation v. Carvelli*, 528 N.E. 2d 133 (Mass. App. Ct. 1988). Generally, in a nominee trust arrangement, the names of the beneficiaries are set forth on an unrecorded schedule of beneficial interests, the trustees act only as directed by the beneficiaries, and the beneficiaries may terminate the trust at any time. A sale of real estate held by a nominee trust may be accomplished by an assignment of beneficial interests accompanied by the resignation of the trustee and appointment of a successor trustee.

### Issue:

Are sales and transfers of beneficial interests in nominee trusts for consideration in excess of one hundred dollars subject to the deeds excise?

### Directive:

Sales and transfers of beneficial interests in nominee trusts for a consideration in excess of one hundred dollars are subject to the deeds excise. The excise stamps should be affixed to the assignments of beneficial interest, whether or not these documents are recorded.

### Discussion of Law:

G.L. c. 64D, § 1, provides that there shall be levied, collected and paid an excise upon a "deed, instrument, or writing, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers ... when the consideration of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds one hundred dollars." Thus, under the statute, an excise is due upon any instrument or writing transferring an interest in real estate; the excise is not restricted to "deeds." Moreover, the excise is not limited to deeds, instruments, or writings that will be recorded.

In cases involving nominee trusts, Massachusetts courts have often looked behind the nominee trust entity and treated the ben-

eficial owner as the true owner of the real estate. The Supreme Judicial Court ruled that "where a statutory limitation on damages protects the beneficiary of a nominee trust, ... the beneficiary reasonably can be regarded as the true owner, and the limitation should apply to property held in trust for the beneficiary." See *Morrisson v. Lennett*, 415 Mass. 857, 616 N.E.2d 92 (1993). The SJC has also ruled that real estate trusts in which the beneficiary has complete control of the trust property may be disregarded for personal income tax purposes, thereby permitting the beneficial owner to deduct losses associated with the real estate on his personal income tax return. See *Bertram A. Druker v. State Tax Commission*, 374 Mass. 198, 372 N.E.2d 208 (1978).

In determining if the deeds excise is applicable, the Department has previously looked at the substance rather than the form of a transaction. In Letter Ruling 90-1, the Department ruled that transfers of ownership of cooperative apartments are subject to deeds excise. The substance of the transaction (stock transfer and proprietary lease to the new owner) is the right to occupy a specific apartment with maximum incidents of ownership. The transaction is therefore subject to the deeds excise, even though title to the real estate remains with the corporation, and the proprietary lease may not be recorded. See also LR 79-52, in which the Department ruled that leases for very extended periods are subject to the deeds excise.

Similarly, looking behind the nominee trust entity, the substance of a sale and assignment of beneficial interests in a nominee trust is to transfer incidents of ownership of the real estate to the new beneficial owners. Such an assignment for a consideration in excess of one hundred dollars is therefore subject to the excise on deeds, instruments, or writings imposed by G.L. c. 64D, § 1.

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